

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF PUERTO RICO

VIRGILIO SOTO-CANCEL,

Plaintiff,

v.

JO ANNE B. BARNHART,  
Commissioner of Social Security,

Defendant.

CIVIL NO. 04-1776 (PG)

**O R D E R**

Before the Court is the Magistrate Judge's Report and Recommendation regarding plaintiff's appeal from the denial of Social Security Benefits, which ultimately advises that the complaint should be dismissed and the decision of the Commissioner affirmed. (Docket No. 12) Having reviewed the same, id., plaintiff's objection thereto (Docket No. 13), the applicable law, and the record of the case, for the reasons set forth below, the Report and Recommendation is **APPROVED AND ADOPTED**.

Following the issuance of a Report and Recommendation, the Court reviews *de novo* the matters delimited by timely and appropriately specific objections. See 28 U.S.C. § 636(b) (2004), Fed. R. Civ. P. 72(b) (2004), and Local Rule 72(d) (2004); see also Borden v. Secretary of Health & Human Servs., 836 F.2d 4, 6 (1st Cir. 1987) ("Appellant was entitled to a *de novo* review by the district court of the [Magistrate's] recommendations to which he objected, however he was not entitled to a *de novo* review of an argument never raised.") (citation omitted); Phinney v. Wentworth Douglas Hosp., 199 F.3d 1, 3-4 (1st Cir. 1999). An objection is timely if filed within ten days of receipt of the Magistrate Judge's Report and Recommendation. See 28 U.S.C. § 636(b), Fed. R. Civ. P. 72(b), and Local Rule 72(d). The Court

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thereafter "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." Id. The Court accordingly reviews defendants objections *de novo*.

Plaintiff timely submitted three objections; to wit, that the non-examining RFCAs were made at the reconsideration level and "as such the ALJ [Administrative Law Judge] did not follow the rulings in the cited cases" (emphasis omitted), that the conflict of evidence does not seem to have been considered by the Magistrate, and that the Appeals Council did not address the questions raised in the memorandum. (Docket No. 13 at 1-2)

Of these objections, the only one which pertains to the Report and Recommendation is the second, regarding the Magistrate Judge's alleged failure to consider a "conflict of evidence." As best as the Court can glean from the truncated and unspecific objection, plaintiff appears to fault the ALJ for not considering his treating physician's opinion.

To the contrary, on that score, the Magistrate Judge carefully parsed the record, finding that the ALJ indeed reviewed the Medical Advisor's testimony. See Report and Recommendation, Docket No. 12 at 10-13. As such, the Court finds zero merit in the objection, and the same is **OVERRULED.**

Plaintiff's remaining objections are consumed under the Magistrate Judge's exhaustive review and do not concern her findings or recommendations. The Court hence disregards them.

Moreover, having carefully reviewed the Magistrate Judge's Report and Recommendation, the Court finds the same to be reasonable and absent of clear error. "The federal procedural scheme ... calls for rifle-shot objections, and its legitimate purposes are frustrated by a vague shotgun blast such as [plaintiff] has loosed. The Court, rather than being directed to a genuine bone of contention, is left, on this claimant's

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approach, to rummage through the haystack in search of the most evanescent of needles." Sackall v. Heckler, 104 F.R.D. 401, 403 (D.R.I. 1984) (per Selya, J.). The Court will go no further.

**WHEREFORE**, in light of the foregoing, the Magistrate Judge's Report and Recommendation is **APPROVED AND ADOPTED**, and plaintiff's objections **OVERRULED**. Judgment shall be entered affirming the decision of the Commissioner and dismissing the complaint with prejudice.

**IT IS SO ORDERED.**

In San Juan, Puerto Rico, September 6, 2005.

S/ JUAN M. PÉREZ-GIMÉNEZ  
JUAN M. PÉREZ-GIMÉNEZ  
UNITED STATES DISTRICT JUDGE